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MEDIATING SUSTAINABILITY; ROLE OF ALTERNATIVE DISPUTE RESOLUTION IN SUSTAINABLE DEVELOPMENT AND ENVIRONMENTAL CONFLICT RESOLUTION

AUTHORED BY - CATHERINE M JOHN

ABSTRACT

Sustainable Development is an idea where the balance between Environmental Exploration and Environmental Exploitation meets. There are enough natural resources for the use of humans, but the over exploitation leads to Environmental Degradation and alarming issues of Climatic Change. The natural resources which are in a perishable nature has to be conserved. Settling Environmental Conflicts is a vital part of Environmental Sustainability and thereby Accessing Justice. The traditional methods of resolving Environmental conflicts through litigation is complex and time consummating. Alternative Dispute resolution (ADR) can be introduced as a solution for this problem. For the urgent and speedy resolution of Environmental conflicts, in the modern world, it poses a question of need for Alternative Dispute Resolution methods rather than the traditional litigation approaches. The paper aims at analyzing the ADR techniques in Environmental Conflicts and the effectiveness of those methods in providing potential and prompting solutions. The study focuses upon different types of ADR techniques, their effectiveness in Environmental problems, it's impact in real life incidents with regard to International and National arena, Limitations, and to provide Recommendations and Suggestions to boost up ADR in environmental protection. The paper concludes that Alternative Dispute Resolution methods are efficient and gives time bound outcome for Environmental Conflicts which paves its way for Sustainable Development. The Environmental ADR uncovers the potential Environmental Disputes at an earlier stage and makes a positive contribution to the resolution of Environment Disputes.

Keywords - Sustainable Development; Alternative Dispute Resolution; Environmental Protection; Environmental Conflict Resolution; Accessing Justice

INTRODUCTION

As the world progresses with a rapid speed in technology and science, the problems of environmental pollution increases. Protection of Environment is the most burning issue in the world. In the last few decades due to enormous and mindless exploitation of natural resources and a huge quantum of industrial and vehicular emissions the very existence of living and non-living bodies is at the verge of death.¹ Climatic change is not a future phenomenon; it's happening right now. It is pertinent to note that the environmental sustainability as a part of the sustainable development cannot be met in isolation from other goals of sustainable development, therefore the interaction among the Sustainable Development objectives is essential for accomplishing the environmental sustainability.² Resolution of environmental conflicts in a rapid and effective method is a part of environmental sustainability and a part of 16th Goal of 2030 Agenda for sustainable development as well, and to achieve peaceful resolution in environmental issues, it is required to reinvent dispute resolution systems.³

The paper analyses the scope of ADR mechanisms in resolving environmental issues more effectively. Alternative Dispute Resolution mechanisms such as Arbitration, conciliation, Mediation and Negotiation offers easier and faster settlement for environmental conflicts. The traditional methods of litigation make the process more time consuming and leads to delay in settlements.

These mechanisms play a role in similar to the role of the official judiciary system for resolving the disputes between different entities, physical or legal. The ADR methods are distinguished with a more cost-effective, time-efficient, flexible, and consensual solving process, and at the same time, some types of ADR methods have enjoined with the same advantages that the judicial process have, in term of binding awards and ability of official authorities to interfere to enforce the parties to dispute to implement the binding content of ADR awards. In other words, the ADR awards produce a legally enforceable result as judicial decisions, with one more feature has come from the nature of ADR as a consensual process that may make the ADR methods more convenient to the parties of disputes.

¹ Dr. S.C. Tripathi, environmental law, 6th ed. 2015.

² Mensah J. Sustainable development: Meaning, history, principles, pillars, and implications for human action: Literature review. Cogent Soc Sci. 2019 Jan 1; 5(1).

³ Cohen H, Alberstein M. Multilevel Access to Justice in a World of Vanishing Trials: A Conflict Resolution Perspective. Fordham Urban Law J. 2019;47.

THE EMERGENCE OF ADR AS AN ENVIRONMENT CONFLICT RESOLUTION MECHANISM

The Alternative Dispute Resolution or ADR is an attempt to devise a machinery which is capable of providing an alternative for conventional methods of dispute resolution. As the Indian courts were overburdened with administration of justice and that a number of disputes were capable of being disposed of by alternative methods such as arbitration, conciliation, mediation, and negotiations. ADR methods provides procedural flexibility, saves time with less expenses and strain.

The Alternative Dispute Mechanisms received parliamentary recognition and support. Arbitration act of 1940 was introduced to for speedy resolution but due to high technical complexities, it lacked its purpose. The Legal Services Authorities Act, 1987 brought the Lok Adalat System for settlement of disputes in a cheap and expeditious manner.

In 1996, The Arbitration and Conciliation Act was enacted. The act goes much beyond the scope of the predecessor, the 1940 act. It provides for Domestic Arbitration, International Commercial Arbitration and also enforcement of foreign arbitral awards. It proceeds on the basis of the United Nations Commission on International Trade Law (UNCITRAL), whereas the General Assembly has recommended that all countries give due consideration to the UNCITRAL in view of desirability of uniformity of the law of arbitral procedures and the specific needs of international commercial arbitration practice.

The Civil Procedure Code (Amendment) Act 1999, included four methods in section 89 for the settlement of disputes. This amendment made the ADRs statutory alternatives in litigation and legally enforceable. The four methods which included in section 89 are

- i. Arbitration
- ii. Conciliation
- iii. Judicial settlement including settlement through Lok Adalat; or
- iv. Mediation

Arbitration is the reference of a dispute or difference between not less than two parties for determination, after hearing both sides in judicial manner, by a person or persons other than a court of competent jurisdiction.⁴ When the parties agree to have their disputes decided with the

⁴ Dharma Prathishthanam v. Madhok Construction (P) Ltd (2005) 9 SCC 686: AIR 2005 SC 214.

mediation of a third person, but with all the formality of a judicial adjudication, that may be, speaking broadly called an arbitration.⁵

Conciliation have been distinguished in Halsbury's Laws of England as a process of persuading parties to reach agreement, and is plainly not arbitration; nor is the chairman of a conciliation board an arbitrator.⁶ Conciliation means "the settling of disputes without litigation."⁷ Lok Adalat is defined as a forum where voluntary effort aimed at bringing about settlement of disputes between the parties is made through conciliatory and pervasive efforts.⁸

Mediation is a process by which disputing parties engage the assistance of a neutral third party to act as a mediator for facilitating dispute resolution in a consensual and amicable way. Mediation is generally done by a single mediator who does not judge the case but helps facilitate a discussion and eventual resolution of the dispute. The Mediation Act of 2023 was enacted to promote and facilitate mediation. The act deals with institutional mediation for resolution of disputes, enforcement of mediated settlement agreements, to encourage community mediation and also accepts online mediation.

Nowadays courts are encouraging the practices of Mediation, Arbitration, Conciliation and Adalat in order to promote faster disposal of disputes. As the settlements arrived is through consensual agreements, there is high chances of acceptance by the parties rather than court orders. The overburdening of courts by many disputes are also making the judiciary and legislature to adopt more ADR techniques to more popular. 'Justice delayed is justice denied' so in order to ensure speedy justice courts are adopting ADR mechanisms.

THE CONCEPT OF ENVIRONMENT, ENVIRONMENTAL POLLUTION AND PROBLEMS FACED

Environment connotes surroundings. It includes the air we breathe, water we drink, trees we seek shade, animals and birds live around, everything is part of Environment. Our basic necessities are fulfilled by Environment. Broadly, environment can be divided into the following two type namely

⁵ Dr. Avtar Singh, Law of Arbitration and Conciliation, chap 1, pg 14, 10th ed, 2013.

⁶ Halsbury's Laws of England, Para 502 (Vol 2, 4th ed).

⁷ Wharton's Law Lexicon (14th ed, 1937, Indian Reprint 1993).

⁸ Supra note 5 at 503.

a. Natural Environment, b. Man-made Environment

Natural environment: Under this type of environment any change in the system caused due to natural processing is counter balanced by the change in the other components of the environment. This type of environment is called homeostatic environment mechanism.

Man-made environment: This type of environment is created by men such as industrial revolution, communication networks like telephone telex, fax, agricultural apparatus, satellite and energy sources like thermal, hydro energy and atomic energy etc.

In the words of Mc Laughtin-"Environmental pollution" means the introduction by man into any part of the environment, of wastes, water energy, energy or surplus energy which changes the environment directly or indirectly adversely to affect the opportunity of men to use or enjoy it.

In terms of Section 2(c) of the Indian Environment (Protection) Act, 1986 the expression "Environment Pollution" means the presence in the environment of any environmental pollutant.

Environment pollution can broadly be classified into-

(1) Natural pollution, and (2) Man-made pollution,

Natural pollution; Under this category of pollution; flood, earthquake, cyclone and drought are placed. These natural calamities are capable to cause havoc that may be disastrous.

Man-made pollution; This class of environment pollution is caused mainly due to unmindful human activities. Today, modern industries produce industrial wastes and toxic gases, which are hazardous to the environment. The reckless use of forest wealth is causing deforestation. It has immediate adverse effects on soils and land which increases the frequency of flood and drought.

Environmental problems are global issue. The major sources of environmental pollutions include uncontrolled growth of population, deforestation, industrial development, unplanned urbanization, technological development, devolution in the field of communication, lack of environmental awareness, vehicular emission, poverty etc.

ADR AND ENVIRONMENTAL, SOCIAL AND GOVERNANCE TENETS TO ACHIEVE SUSTAINABLE DEVELOPMENT

The United Nations defines ‘Sustainable Development’ as development that meets the needs of the present without compromising the ability of future generations to meet their own needs.⁹ It’s a call to action for building a sustainable future for people and the planet.

There is need to link ADR and Environmental, Social and Governance (ESG) tenets in order to expedite the realization of the Sustainable Development agenda across the globe. parties should consider managing disputes concerning ESG requirements through ADR mechanisms such as arbitration and mediation. It has been observed that ESG disputes are increasingly being managed through ADR mechanisms such as arbitration which are very suitable means of resolving ESG related disputes.¹⁰ It is also pertinent for organizations to uphold ESG practices such as green innovation in order to foster Sustainable Development.

In the context of ADR, it is essential for practitioners such as mediators, arbitrators and adjudicators to embrace sustainable practice through measures such as the use of electronic correspondence and electronic submissions; avoiding printing unnecessarily and promoting the use of electronic bundles at hearings; encouraging the use of videoconferencing facilities as an alternative to travel, where appropriate (including for the purpose of fact-finding interviews with witnesses and cross examination of witnesses or experts); selecting suppliers and service providers that are committed to reducing their environmental impact; and avoiding unnecessary travel and offsetting carbon emissions for ADR-related travel.¹¹

It is also imperative for ADR practitioners to enforce good governance practices such as transparency, accountability, reporting and disclosure in their decisions. This will enhance good governance which is a vital component of the ESG discourse.¹² Through these among other measures, Sustainable Development will be achieved through linking ADR and ESG tenets.

⁹ Report Of the World Commission on Environment and Development: Our Common Future, 1987.

¹⁰ Mondaq., ‘International Arbitration and ESG: A New Trend in Dispute Resolution.’ Op Cit.

¹¹ Muigua. K., ‘Green Arbitration: Aligning Arbitration with Sustainable Development.’ Available at <http://kmco.co.ke/wp-content/uploads/2023/04/Green-Arbitration-Aligning-Arbitration-with-Sustainable-Development-Kariuki-Muigua-April-2023.pdf>.

¹² Mazhorina. M., ‘ESG Principles in International Business and Sustainable Contracts.’ Available at https://aprp.msai.ru/jour/article/view/3223?locale=en_US.

INTERNATIONAL INTERFERENCE IN CURBING ENVIRONMENTAL DEGRADATION BY ADR METHODS

The Earth Summit in Rio de Janeiro, Brazil, in June 1992 was the beginning when over 178 nations endorsed the agenda of 2021, a comprehensive strategy that involves global cooperation, aims to boost sustainable development and people's lives and protect the environment.¹³

Goal 16 of the 2030 Agenda for Sustainable Development, calls for peace, justice, and strong institutions to promote rule of law and access to justice at a global level.

ADR methods as alternative mechanisms for accessing and achieving justice cannot be ignored anymore, especially it is looked at them as cost and time-effective and successful methods. Achieving justice which is embodied in Goal 16 of the 2030 Agenda, interacts with some other objectives in the field of environmental sustainability, Which are 'accessing to safe water' (Goal 6th), accessing to sustainable energy(Goal 7th), addressing the environmental consequences of urban development (Goal 11th), detaching between the growth of the economy and non-sustainable resource (Goal 12th), climate change(Goal 13th), protection of resources of marine, seas, and oceans and usage of these resources based on sustainable base (Goal 14th), protection and sustainable use of terrestrial ecosystems(Goal 15th), finally, the cooperation among all entities, governmental or non-governmental, for supporting and achieving of the 2030 Agenda objectives(Goal 17th).¹⁴

The Aarhus Convention 1998, is a further important step, article 16 of the Aarhus Convention supported the general standards of the Rio Declaration of 1992 and encouraged solving disputes by amicable methods like conciliation and mediation or any other type of resolving methods, as well as it permits to pursue binding methods like arbitration and adjudication if the amicable methods have failed.¹⁵

In 2013 the Minamata Convention on Mercury was signed, and in 2017 went into force, which

¹³ Dodds F. Maurice Strong – From Poverty to UN Under-Secretary General and Father of Sustainable Development – The Rio Earth Summit. *Heroes Environ Dipl.* 2022 May 3; 111–32.

¹⁴ Lindsey I. An overview of Sustainable Development Goal 17. *Routledge Handb Sport Sustain Dev.* 2021 Dec 8; 429–41.

¹⁵ Jerzy Jendrośka, Lorenzo Squintani MR. The Courts as Guardians of the Environment – New Developments in Access to Justice and Environmental Litigation — the University of Groningen research portal. *university of groningen.* 2020.

confirmed the importance of ADR in conflict resolution. Article 25 of the Minamata Convention, took the same position as Article 16 of the Aarhus Convention and supported amicable resolution of disputes first through peaceful means chosen by the parties such as negotiation and mediation, before resorting to mandatory methods such as arbitration or adjudication.

International disputes regarding environmental conflicts, pollutions, trade disputes are easier to resolve by ADR mechanisms. The conventions and treaties in order to promote ADR to solve disputes, fosters the relationship between countries, international entities and multinational companies. The ADR techniques helps in resolving the differences in a peaceful and amicable manner so as not to disrupt the international harmony. A talk with wisdom and conscience can solve more problems than a war will ever solve.

ROLE OF ADR METHODS IN TACKLING ENVIRONMENTAL ISSUES IN INDIA

India is one of the countries that were liberated from Locus Standi rule in terms of environmental issues. The rule of Locus Standi states that courts are not allowed to allow anyone to participate in a forum unless they can show that some of their rights were violated. This means that only those who have been injured can participate in the court proceedings. The liberalisation of the classical Locus Standi rule offered Environmental NGOs and civil society groups a huge advantage in approaching the Court in public interest cases including environmental cases when the injured parties were marginalized or difficult to prove or they can participate in the case as a third party or jointly with the injured party. As a result, environmental administration bodies by pursuing ADR methods can help to mitigate the harsh critiques directed at the concept of public interest litigation.¹⁶

In order to Adopt the principles adopted by the United Nations Conference on the Human Environment held at Stolkhom, india enacted The Environment (Protection) Act in 1986. It is regarded as a protective and progressive socio-economic enactment. The basic aim of the act is to protect and improve environment and bring greater awareness among people. Act also puts deterrent control over the polluters of environment by making them liable to penal action. These enactment has helped to provide a framework for environment protection in india

¹⁶ Abdullah NC. Going Green in Urbanisation Area: Environmental Alternative Dispute Resolution as an Option. *Procedia - Soc Behav Sci.* 2015 Jan 27; 170:401–8.

National Green Tribunal, which was established on October 2010 by The National Green Tribunal Act. A chairman (judicial), 10 to 20 full-time judicial members and 10 to 20 experts are all selected by the Central Government as the members of tribunal. NGT functions to protect and conserve the Environment and natural resources, to enforce Environment Laws, to provide compensation for damage to people and property, to resolve Environmental Disputes and to provide Environmental Justice. From the inception, NGT has made tremendous efforts to conserve nature and reduce environmental pollutions. By incorporating ADR methods to solve the environmental disputes by NGT will prove to be faster and more promising solutions.

CASE STUDIES

VIZHINJAM SEAPORT CONFLICT

Vizhinjam International Seaport is an under-construction port in Thiruvananthapuram conceived 25 years ago. The construction of the port began in 2015 when the Kerala cabinet awarded the port and deep-water container trans-shipment terminal to Adani Ports and SEZ. The deep-water sea port is on 360 acres of land (of which 130 acres have been reclaimed from sea) will have the capacity to handle 80 per cent of India's cargo.

The project has faced opposition from environmental activists, local fishermen and the tourism industry. They allege that the port would cause largescale coastal erosion. In 2016, two environmental activists in Thiruvananthapuram filed a plea at the National Green Tribunal (NGT) against the port. But the NGT refused to cancel the environment clearance, although it later allowed a review plea to be filed. Lawyer Prashant Bhushan representing fisherman's near Vizhinjam also filed a petition demanding stay on port work until the environmental impacts of the project were reassessed. However, the Supreme Court ruled instead that work would continue and that Adani Group and the Government of Kerala would be held responsible for "restoring the environment to its original position if the court thought it fit to interfere with construction activity".¹⁷

Local fisherfolk allege that their access to the sea has been blocked since the commencement of the project. The fisherfolk community also allege of delayed compensation and non-rehabilitation of families who gave their land for the project. On October 30, 2018, fisherfolk from Vizhinjam joined their counterparts in a countrywide protest to oppose the shipping

¹⁷ M/S. Adani Vizhinjam Port Pvt. Ltd v. State of Kerala WP (c). No. 26567 of 2020.

corridor. There are 18,000 cases seeking rehabilitation and compensation were being filed by August 2019, however, the government didn't make any payouts citing the election as reason for delays.

The impact has become evident of late. In a report in October 2020, T. Peter, general secretary of the National Fish workers Forum claimed that the coastal erosion has already left 172 families homeless. Environmental activist Thomas Lawrence also expressed concern stating that in 2019 itself, around 603 people belonging to 143 families from the villages were shifted to relief camps due to incursion of the sea. However, both the Adani Vizhinjam Port Pvt Ltd and the Kerala government firmly deny of any coastal erosion and ecological destruction. The compliance report of the seaport project for October 2019-March 2020, issued by Adani Vizhinjam Port Pvt Ltd in consultation with the Kerala government, states that there is no shoreline degradation in the area as projected by those who oppose the project.¹⁸

The construction of the Vizhinjam International Deepwater Multipurpose Seaport is fast progressing. With that, the tragedy awaiting the coastline is also fast approaching, say researchers. The continuous dredging activities in Vizhinjam region has led to environmental problems and the rocky reefs which are a habitat for hundreds of marine creatures have been covered with sand and are completely destroyed. This has also led to the loss of livelihood of the fishermen community, especially traditional mussel collectors.¹⁹

NARMADA – SARDAR SAROVAR DAM PROJECT

The Sardar Sarovar Dam is one of the biggest dams built within the framework of the Narmada River Development project which started in 1979. However, from 1985 onward, civil discontent began to rise, coming from citizens, academics, international and national NGOs and medias who denounced several infringements of environmental and human rights standards. Different groups of non-violent activists merged in 1989, giving birth to the 'Narmada Bachao Andolan', which has been leading the protest since then and opposing the governments of Madhya Pradesh, Maharashtra and Gujarat, as well as the government of India, which were all supporters of the project.

¹⁸ Dr. K.H. Amitha Bachan, Vizhinjam Seaport Sparks Fear Among Locals, Environmentalists Over Coastal Erosion, Land Conflict Watch, Aug 25, 2022

¹⁹ Steni Simon, The New Indian Express, 28th July 2021.

The building of the dam has entailed massive flooding of villages and productive land. This has brought about extensive environmental consequences, such as a negative effect on downstream fishing, threat on wildlife natural habitat, waterlogging and salinization of water, silting of the river bed, deforestation.²⁰ For populations whose livelihood entirely relies on agriculture, an ecological disaster, such as this, also has economic impacts by damaging their mean of subsistence. The net benefits of the dam itself are thus questioned. Further it has been argued that climate change could worsen the situation.

The Supreme Court of India decided to suspend the construction of the dam in 1995 because of the lack of a prior assessment of the project's environmental and social impacts. After the involved regional governments established a Grievances Redressal Authority to deal with the resettlement and rehabilitation of those displaced, the Supreme Court permitted the construction of the dam. However, the grievances of the displaced population were ultimately left unaddressed.

PLACHIMADA ANTI COCA COLA STRUGGLE

In March 2000, Coca Cola, under its Indian subsidiary Hindustan Coca Cola Beverages Private Limited (HCCBPL), commenced operations at its bottling plant at Plachimada, in the southern state of Kerala. Over the next few years, the area surrounding the plant began to feel the plant's hazardous effects, as groundwater was contaminated and toxic waste released. What followed was a long struggle by the people of Plachimada, interest groups, and NGOs, leading to the eventual shutdown of operations at the plant.

On April 22, 2002, the 'Coca Cola Virudha Janakeeya Samara Samithy' (Anti-Coca Cola Peoples' Struggle Committee) began its protest against the plant, with over 1500 people, mostly adivasis, demanding the immediate shutdown of the plant owing to the severe hazard it was causing to their daily lives. On 3 April 2003, the Perumatty panchayat revoked the license for the plant. Coca-Cola took the case to the Kerala High Court, which at first sided with the firm, saying the panchayat's claims were unscientific and unfounded. The legal battle lasted years. At times, the plant operated, but eventually, the plant was closed permanently, after Coca-Cola declared it had no plans to restart bottling operations. In 2019, Coca-Cola submitted a proposal to turn the plant into a training center for local farmers.

²⁰ Bradford Morse & Thomas R. Berger, Sardar Sarovar-Report of the Independent Review (Ottawa; Resource Futures International, 1992) pp. xi-xxv and 349-58

All these struggles where lead by local people who were affected by the developmental projects or multinational companies. If the ADR techniques were employed in these conflicts, the environmental concerns, rehabilitation process etc would have been much effective and easier. Efficient use of ADR will ensure the interests of general public and stakeholders and will end up in a mutual cooperation and consideration.

LIMITATIONS, RECOMMENDATIONS AND SUGGESTIONS

India's development in environmental dispute resolution has a number of promises. Facilitated negotiation, in particular, can grow the device's potential to deliver justice to society through and using negotiating methods. Despite the plain fee of those techniques, some roadblocks stand withinside the manner of mediation in India. Despite their speedy expansion, recognition of those aided negotiation strategies remains restricted. Judges and legal professionals have valid worries concerning the connection between mediation and the authentic courtroom docket process, in addition to robust scepticism approximately the usage of mediation in a huge variety of conditions in India.

There are tremendous positive acts from the part of Government to ensure the biodiversity of India. The enactments and government policies are hopeful in today's scenario. Although some more efforts from the part of government can lead to more effective conservation of the Environment.

The National Green Tribunal Act of 2010 provides for effective expeditious of cases relating to environment protection and conservation of forests and other natural resources and ensures enforcement of environment related legal rights and providing relief to persons and properties affected therewith. The National Green Tribunal established under the act is in a quasi-judicial form which works with the principles of natural justice. Introducing ADR mechanisms in environmental disputes can make the process more appealing to the parties. As the economic growth and infrastructure development may sometimes come against the environmental concerns, considering those matters in conciliation or mediation can bring about faster acceptance. Using ADR in tackling environmental disputes can ensure the rehabilitation, and reliefs in a time bound manner.

Using the efficiency of trained Arbitrators and Mediators in resolving Environmental conflicts will ensure the needs of public at large and will also consider the advantages of developmental

projects.

CONCLUSION

Employing ADR methods to resolve the Environmental Conflicts are the solution for the future thereby achieving Sustainability and Access to Justice. Arbitration, mediation, conciliation, and negotiation, the four primary types of ADR, have all been used successfully by various countries in the settlement of environmental conflicts. Even when ADR methods have been failed in reaching a final settlement of some disputes, some positive results were achieved, such as expression of the points of view and reduce the range of conflicts. Though the ADR methods doesn't reach a final settlement there are chances of having conversations which may impact on positive results. In the particular biodiversity of India, there are chances of having more conflicts regarding the development works and environment conservation. In those circumstances employing traditional methods of litigation may turns out time consuming, and become a barrier in resolving issues more amicably. Using the ADR techniques in environmental conflicts can lead to easier way of resolution. Settling environment conflicts are a part of the environment maintenance approach which in its role is an essential base of sustainable development on one hand and accessing justice and further the rule of law is another essential base on another hand, that makes clear the use of ADR methods will be indispensable, but the issue does not only stand on this limit, it should be extended to open the prospects for boosting the current ADR methods and creating new ADR methods.

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